

**REMARKS**

Claims 1, 3, and 5-20 are pending in the present application. Claims 1, 5, 8, 15, 18, and 20 are independent claims.

**ALLOWABLE SUBJECT MATTER**

Applicants respectfully thank the Examiner for taking the time to discuss the present application by phone. Applicants have adopted the strategy outlined by the Examiner to secure allowance of claims 1, 3, and 5-20. In particular, Applicants have filed a disclaimer, in order to remove the double-patenting rejection, filed a Declaration of Attribution in order to remove Chang et al. as a §102(e) reference, and added the subject matter of dependent claim 4 (as well as intervening claim 2) to independent claim 1, in order to traverse the Dupray rejection. Applicants have also amended independent claim 20, to include subject matter similar to dependent claim 4, and rewritten allowable dependent claims 5, 8, 15, and 18 into independent form. Accordingly, as currently written, claims 1, 3, and 5-20 are in condition for allowance.

**CLAIMS 1-3 AND 20 (THE DUPRAY PATENT)**

The Official Action rejects claims 1-3 and 20 under 35 U.S.C. §102(e) as being anticipated by Dupray, U.S. Patent No. 6,249,252 (hereinafter "the Dupray patent"). The Applicants traverse this arts grounds of rejection.

This rejection is moot in light of the addition of dependent claim 4 into independent claims 1 and 20.

**CLAIMS 1-20 (§102(E) REJECTION IN VIEW OF CHANG, ET AL.)**

The Examiner has rejected claims 1-20 under 35 U.S.C. §102(e) as being anticipated by Chang et al.; U.S. Patent No. 6,263,208 (hereinafter "the Chang patent"). Applicants traverse this §102(e) rejection.

Applicants respectfully submit that the Chang patent does not qualify as prior art under 35 U.S.C. §102(e), as evidenced by the attached Declaration and affidavit from inventors Chang, Jeske and Rege. Applicants respectfully submit that the subject matter of the Chang patent relied upon to reject claims 1, 3, 6-7, 9-14, and 17 of the present application is actually Mr. Chang, Mr. Jeske and Mr. Rege's own invention.

35 U.S.C. §102(e) prior art must be prior art by that of another. In the present instance, the disclosure in the Chang patent is not by another, but rather by Chang, Jeske and Rege themselves. Accordingly, Applicants respectfully submit that the Chang patent is not 35 U.S.C. §102(e) prior art against claims 1, 3, 6-7, 9-14, and 17 of the present application. Applicants direct the Examiner's attention to the attached Declaration and affidavit.

In view of the attached evidence, withdrawal of the present rejection is respectfully requested with respect to claims 1, 3, 6-7, 9-14, and 17.

With respect to claims 5, 8, 15-16, and 18-19, Applicants respectfully submit that these claims recite a sequential Bayesian procedure or a Bayes-modified maximum likelihood (ML) estimator, which is neither taught nor suggested by the Chang patent. Accordingly, Applicants respectfully submit that claims 5, 8, 15-16, and 18-19 are patentable over the Chang patent for at least this reason.

**CLAIMS 1-11 AND 20 (DOUBLE PATENTING REJECTION)**

Claims 1-11 and 20 are rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of the Chang patent. The Applicants have attached a Terminal Disclaimer to obviate the double patenting rejection over a prior patent, the Chang patent. Therefore, claims 1-11 and 20 are allowable and the Applicants respectfully request allowance of claims 1, 3, 5-11 and 20.

**CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone John A. Castellano at (703) 668-8029.

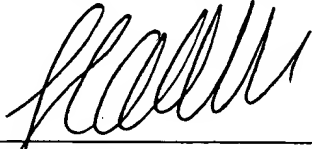
Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1-20 in connection with the present application is earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By



---

John A. Castellano, Reg. No. 35,094  
P.O. Box 8910  
Reston, Virginia 20195  
(703) 668-8000

JAC/cah